IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Appeal Against Award No. 739 of 2006

The New India Assurance Company Limited
Through its Senior Divisional Manager
Nainital Road, Haldwani (Nainital) ... Appellant

Vs

1. Smt. Kushu Devi W/o Late Sri Gopal Singh
2. Kiran Kathayat S/o Late Sri Gopal Singh
3. Smt. Hajari Devi S/o Veer Singh
   All R/o Balonch Ward Number 6
   Dharchula – Nepal
4. Mohan Singh S/o Sri Jagat Singh
   R/o Village Suwa, Post Office Dharchula
   Tehsil Dharchula
   District Pithoragarh ... Respondents

Shri R.B. Agarwal, learned counsel for the appellant.

Hon'ble B.C. Kandpal, J.

This appeal has been filed under Section 173 of the Motor Vehicle Act by the New India Assurance Company Ltd. Against the judgment and award dated 22.08.2006 passed by the M.A.C.T./District Judge, Pithoragarh in M.A.C.P. No. 39 of 2003 between Smt. Kusha Devi Vs. Mohan Singh & others.

2. Brief facts giving rise to this appeal are that on 14.10.2002, the deceased – Gopal Singh was coming from his place of work and travelling in a jeep No. UA05/0692, when the said jeep reached near Rangti Nala Dharchula Tawaghat Motor Road, due to rash and negligent driving of the driver fell into the khud. In this accident, Gopal Singh sustained injuries and died at the spot. According to the claimants, the deceased- Gopal Singh was working as labourer and earning Rs. 4,000/- per month out of which he spent Rs. 3,000/- on his family members. Therefore, the claimants filed claim petition before the Tribunal concerned with a compensation for Rs. 6,68,000/- as compensation.

3. The opposite parties contested the claim petition and filed its written statement before the Tribunal concerned. Sri Mohan Singh – owner of the jeep has alleged that at the time of the accident the jeep was being driving in very slow speed and the accident occurred due to mechanical fault in the jeep. It has further alleged by the owner of the jeep that at the time of the accident that driver was having valid driving licence and permit. It has further alleged in the written statement that at the time of the accident, the jeep in question was insured with New India Assurance Company Ltd., therefore, the liability of compensation is on the company.

4. The New India Assurance Company Ltd. has also filed its written statement denying the contents of the plaint. The Insurance Company has also alleged that at the time of the accident the owner of the vehicle in question was not having the valid permit and the driver was also not having valid driving licence. The accident took place due to rash and negligent driving of the driver. Therefore, the claim petition is not maintainable.

5. On the basis of the pleadings of the parties, the Tribunal concerned has framed following issues:-

1. Whether the accident in question took place on 14.10.2002 at Rongtinala Dharchula, Tawaghat Road by Jeep No. UA05/0692 account of the rash and negligent driving of its driver, in which Bhupender Singh sustained injuries?
2. Whether the driver of jeep No. UA05/0692 was not having the valid driving licence at the time of the accident?

3. To what amount of compensation, it any the claimants are entitled to get, and against whom?

6. Thereafter, both the parties were adduced their evidence in support of their case. The Tribunal, after assessing the entire evidence on record and after hearing learned counsel for the parties, decreed the claim petition for an amount of Rs. 1,79,500/- along with interest @ 8% per annum as compensation vide judgment and award dated 22.08.2006.

7. Feeling aggrieved by the aforesaid judgment and award the New India Assurance Company Ltd. filed this Court.

8. Heard Sri R.B. Agarwal, learned counsel for the appellant and perused the record.

9. The sole controversy has involved in this case is whether the driver of the offending vehicle was having valid driving licence at the time of the accident or not.

10. Learned counsel for the appellant has argued that Gopal Singh was driving the vehicle who also died in the accident while one Gyan Singh has been produced by the owner of the vehicle as driver for making a case that the offending vehicle in question was being driven by Gyan Singh. Therefore, according to his submission when Gyan Singh was not driving the vehicle, then the driving licence of Gyan Singh does not carry any importance and owner has not produced the driving licence of the driver Gopal Singh, therefore, the Insurance Company has no liability to pay the compensation.

11. The Tribunal has framed issue No. 2 as to whether the offending jeep No. UA05 0692 was having valid and effective driving licence at the time of the accident or not.

12. The Tribunal has discussed the evidence in detail to decide this issue.

13. The Insurance Company although pleaded this thing before the Tribunal but did not adduce any evidence in order to show that the offending vehicle in question was actually been driven by the deceased – Gopal Singh at the time of the accident. The owner of the vehicle produced the driving licence of Gyan Singh as paper No. 28-C which shows that Gyan Singh was having valid and effective driving licence on the date of accident. The Insurance Company has filed the report of the investigator paper No. 330C by which it is indicated that the offending jeep was being driven by Gopal Singh at the time of the accident. It is worthy to mention her that the investigator who submitted the report has not been produced before the court in order to prove the report. The investigator has also filed the copy of the First Information Report as well as the final report and order accepting the final report. Learned counsel for the appellant on the basis of these report has argued that these papers indicate that Gopal Singh was the driver of the offending vehicle at the time of the accident.

14. I fail to appreciate the arguments advanced by the learned counsel for the appellant/ insurer.

15. The report was lodged by Shyam Singh brother of the deceased – Gopal Singh who is neither an eyewitness nor is a resident of India but a resident of Nepal. The Final Report

submitted by the police cannot be conclusive proof to show that the offending vehicle in question was being driven by Gopal Singh at the time of the accident.

16. The evidence which has been adduced in the claim petition before the Tribunal clearly indicate that the offending vehicle was being driven by Gyan Singh who was having a valid and effective driving licence at the time of the accident.

17 The point raised by the learned counsel for the appellant is devoid of any merit and is liable to be dismissed.

18. On the basis of the perusal of the record, I do not find any illegality or infirmity in the impugned judgment and award passed by the court below.

19. Accordingly, the appeal is dismissed in-limine.

20. The impugned judgment and award dated 22.08.2006 passed by the M.A.C.T./District Judge Pithoragarh in M.A.C.P. No 39 of 2003 between Smt. Kusha Devi & others Vs Mohan Singh & another is hereby confirmed.

(B.C. Kandpal, J.)

15.12.2006
ASWAL